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10 **BEFORE THE**  
11 **BOARD OF REGISTERED NURSING**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. 2010-157

15 **CATHY LEE HENNING, aka**  
16 **CATHY LEE BROOKSHER**  
1383 East Omaha Avenue  
Fresno, California 93720

**A C C U S A T I O N**

17 **Registered Nurse License No. RN 548459**

18 Respondent.  
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20 Louise R. Bailey, M.Ed., RN, ("Complainant") alleges:

21 **PARTIES**

22 1. Complainant brings this Accusation solely in her official capacity as the Interim  
23 Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

24 **License History**

25 2. On or about September 29, 1998, the Board of Registered Nursing issued Registered  
26 Nurse License Number RN 548459 ("license") to Cathy Lee Henning, also known as Cathy Lee  
27 Brooksher ("Respondent"). The license will expire on January 31, 2010, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code ("Code"), unless otherwise indicated.

4. Code section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

5. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

6. Code section 118, subdivision (b), provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

## STATUTORY PROVISIONS

7. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, . . .

8. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any

dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

9. Health and Safety Code Section 11173, subdivision (a), provides that no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

### **COST RECOVERY**

10. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

### **11. DRUG:**

"Fentanyl" is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (c)(8).

### **CAUSE FOR DISCIPLINE**

#### **(Obtained and Self-Administered a Controlled Substance)**

12. Respondent is subject to disciplinary action under Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivisions (a) and (b), in that while on duty as a registered nurse at Children's Hospital Central Valley in Madera, California, Respondent committed the following acts:

a. On November 1, 2005, Respondent obtained Fentanyl, a controlled substance, by fraud, deceit, misrepresentation or subterfuge, or by a concealment of material fact, by obtaining the drug from an IV drip bag belonging to a patient who had been discharged from the hospital, in violation of Health and Safety Code section 11173, subdivision (a).

b. On November 1, 2005, Respondent self-administered Fentanyl, a controlled substance, without lawful authority. Respondent submitted to a drug test which subsequently tested positive for Fentanyl.

**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:


1. Revoking or suspending Registered Nurse License Number RN 548459 issued to Cathy Lee Henning, also known as Cathy Lee Brooksher;

2. Ordering Cathy Lee Henning, also known as Cathy Lee Brooksher, to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

3. Taking such other and further action as deemed necessary and proper.

DATED: \_\_\_\_\_

9/15/09

  
LOUISE R. BAILEY, M.Ed., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant